

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEPHEN LEE BOWERS,

Petitioner,

Nos. 11-CV-12449
07-CR-20208

vs.

Hon. Gerald E. Rosen

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER REGARDING PETITIONER'S
REQUEST FOR A CERTIFICATE OF APPEALABILITY

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on December 05, 2014

PRESENT: Honorable Gerald E. Rosen
United States District Judge

Stephen Lee Bowers filed a Motion pursuant to 28 U.S.C. § 2255 to vacate and set aside his conviction and sentence for sexual exploitation of children and possession of child pornography. On October 1, 2014, this Court denied that Motion finding no factual or legal merit in any of Petitioner's claims. On November 12, 2014, Bowers filed a Notice of Appeal and an application to proceed on appeal *in forma pauperis*. On November 18, 2014 the Court denied Bower's *ifp* application and also denied him a certificate of appealability. *See Bowers v. United States*, No. 07-CR-20208 [Dkt. # 93].

This matter is presently before the Court on Petitioner's December 2, 2014 "Request

for a Certificate of Appealability,” which this Court will treat in part as a motion for reconsideration of the Court’s previous decision to deny petitioner a certificate of appealability. For the reasons that follow, the Court will deny petitioner’s motion. The Court will further order that petitioner’s request for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit.

E.D. Mich. Local Rule 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *Id.*; *See also Flanagan v. Shamo*, 111 F. Supp. 2d 892, 894 (E.D. Mich. 2000). The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof. A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. *Witzke v. Hiller*, 972 F. Supp. 426, 427 (E.D. Mich. 1997).

Because this Court previously denied Petitioner a certificate of appealability, the Court will construe Petitioner’s motion for a certificate of appealability as a motion for reconsideration of the Court’s prior order denying a certificate of appealability. *See e.g. Jackson v. Crosby*, 437 F. 3d 1290, 1294, n. 5 (11th Cir. 2006).

Petitioner’s motion for reconsideration will be denied, because Petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied Petitioner’s application for leave to appeal *in forma pauperis* and declined to issue him a certificate of appealability. *See Hence v. Smith*,

49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

This Court notes that the proper procedure when a district court denies a certificate of appealability is for the petitioner to file a motion for a certificate of appealability before the appellate court in the appeal from the judgment denying the motion to vacate sentence. *See Sims v. United States*, 244 F. 3d 509 (6th Cir. 2001)(citing Fed. R.App. P. 22(b)(1)). In light of the fact that this Court has already denied Petitioner Bowers a certificate of appealability, Petitioner should direct his request for a certificate of appealability to the Sixth Circuit. The Court, in the interests of justice, will order that Bower's request for a certificate of appealability be transferred to the United States Court of Appeals for the Sixth Circuit.

Accordingly,

IT IS HEREBY ORDERED that Bowers' request for reconsideration of the Court's previous denial of a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of the Court transfer Bowers' December 2, 2014 "Request for Certificate of Appealability" [**Dkt. # 94**] to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

SO ORDERED.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: December 5, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on December 5, 2014, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135